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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,065	02/25/2004	Nicholas J. Berg	2241.0010000/TGD/JDS	8925
26111 7590 08/10/2007 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER MARCETICH, ADAM M	
			ART UNIT 3761	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,065	<b>Applicant(s)</b> BERG, NICHOLAS J.	
	<b>Examiner</b> Adam Marcetich	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Walker (US 6,652,495). Walker discloses a system for disposing of body fluids collected during surgery comprising a canister and an apparatus for emptying and cleansing the canister (column 2, lines 59-66) comprising a waste material collection chamber inlet (inlet port 116) in communication with an outlet of a waste material transfer hose (inlet tube 120) and a collection chamber outlet (nipple 104), a vacuum source (vacuum port 102) connected to the collection chamber (canister 70); and a cleaning fluid chamber inlet (inlet port 28) for receiving the transfer hose inlet so the cleaning fluid is drawn through the transfer hose and the collection chamber by a vacuum source to clean both the hose and the chamber (column 3, lines 21-36 especially lines 21, 34 and 37-42, and column 4, lines 6-11 and 55-58 and figure 2).

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 2-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US 6,652,495) in view of Griffiths (US 5,914,047). Regarding claim 2 Walker discloses the apparatus as discussed above with respect to claim 1. Walker does not expressly disclose a float. **Griffiths** discloses a self-cleaning apparatus 10 for transferring, collecting and disposing of waste material from a patient (column 2, lines 55-63), comprising: a tube/waste material transfer hose 56a for transferring waste material from a patient to the apparatus (column 7, lines 17-18 and figure 3); a non-disposable waste material collection chamber 30 [Note that although the suction chambers, tube sets, and collection chamber liner 146 may be disposable-see column 5, lines 32-43 and column 11, lines 36-42; the language "disposable" is an intended use limitation, since a user may dispose or retain a component as needed] having an inlet in communication with an outlet of the transfer hose 84 (figure 3); a vacuum source 58 connected to waste material collection chamber 30 by a vacuum line [Note the vacuum line is considered to include tubes 50 and 70A in figure 3] (column 7, lines 17-27 and lines 33-34); and a liquid disinfectant reservoir/cleaning fluid chamber (reservoir 225, column 7, lines 63-67 and Fig. 7) being arranged to communicate with and receive the inlet of transfer hose (inlet conduit 224, Fig. 7) by inserting the inlet of waste transfer hose 224 into the cleaning chamber 225 to permit the cleaning fluid to be transferred to and through the transfer hose 224 and the waste collection chamber 225 to clean the

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transfer hose and collection chamber (column 7, lines 63-67). Griffiths further discloses float valves 110a, 110b disposed within the vacuum line (figure 3) to close the vacuum line to prevent waste material within collection chamber 30 from being drawn into the vacuum line by the vacuum source 58 when the collection chamber is filled to capacity (column 8, line 65-column 9, line 10). One would be motivated to modify the apparatus of Walker to have a float valve to open and close the vacuum lines since the references both disclose waste transfer and cleaning devices. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Walker in order to prevent overflow of a waste collection chamber during a procedure.

5. Regarding claims 3, 5, 10-11 and 14 Griffiths further discloses treated waste peristaltic discharge pump 34 discharges liquid waste from collection receptacle 30 to empty the receptacle (column 6, lines 59-63).
6. Regarding claims 4 and 13 Griffiths further discloses electronic control unit/switch 88 that transmits signals through lines 102 to activate disposal pump drive 104 to pump out waste material from the collection chamber (column 9, lines 10-21).
7. Regarding claims 6 and 12 Griffiths further discloses filter 52 disposed within the vacuum line between vacuum source 58 and floats 110a, 110b (figure 3) to prevent waste from being drawn into vacuum source 58 (column 7, lines 15-17).
8. Regarding claims 7-8 Griffiths further discloses cleaning fluid chamber 80 is positioned upstream of transfer hose 84 inlet and waste collection chamber 30 to permit

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the cleaning of the transfer hose and collection chamber (column 7, lines 57-65 and figure 3).

9. Regarding claim 9 Griffiths further discloses a suction nozzle 44A connected to the inlet of transfer hose 84 (column 7, lines 17-27).

### ***Response to Arguments***

10. Applicant's arguments filed 13 June 2007 have been fully considered but they are not persuasive.

11. Regarding Applicant's argument on p. 4 of 8 that structure 104 functions as a nipple for a vacuum line rather than as a chamber outlet, Examiner notes that the claims are drawn to a device, not a method of using. The structure of Walker, inlet tube 102 and structure 104 meets the claimed invention. Since fluids are capable of passing through the device of Walker in the claimed method, the invention of Walker is capable of being operated as claimed.

12. Regarding Applicant's argument on p. 5 of 8 that a second vacuum source is required to draw fluid into a canister, Examiner notes that the limitation of "by said vacuum source" represents functional language. The claimed structures are met by Walker, since Walker discloses a waste collection chamber, waste material transfer hose, cleaning fluid chamber and vacuum source as discussed above.

13. Regarding Applicant's argument on p. 5 of 8 that cleaning fluid from the servicing unit of Walker cannot be drawn into inlet tube 120 and canister 72, Examiner notes that

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reservoir 225 and inlet conduit 224 are capable of allowing cleaning fluid to enter canister 72.

14. Regarding Applicant's argument on p. 7 of 8 that neither structures of Walker nor Griffiths meet the claimed structure, Examiner notes that the language "for receiving the inlet of the material transfer hose to draw fluid into and through the inlet of the material transfer hose, material collection chamber and pump" represents functional language. Applicant admits that Griffiths discloses a discharge pump. The inlet of Walker is adaptable to receive an inlet of a material transfer hose, as it provides an orifice for passage of a hose.

### ***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is 571-272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Adam Marcetich  
Examiner  
Art Unit 3761

*Adam Marcetich*

AMM

  
LOAN H. THANH  
PRIMARY EXAMINER